IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

AMERICAN UNITED LIFE INSURANCE COMPANY, EUGENE P. BERRY, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of The American Life Insurance Company of Detroit, Michigan, and DAN E. LYDICK, Receiver of The American Life Insurance Company of Detroit, Michigan, in Texas, *Petitioners*,

vs.

CHARLES R. FISCHER, Commissioner of Insurance of the State of Iowa, as Receiver for The American Life Insurance Company, *Respondent*.

RESPONDENT'S RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The facts have been fully stated in the first opinion of the Circuit Court of Appeals, 117 Fed. (2d) 811, the opinion of the Supreme Court of the United States, 314 U. S. 549, 62 S. Ct. 380, 86 Law Ed. 444, and are summarized in the last opinion of the Circuit Court of Appeals in 130 Fed. (2d) 643. It is not deemed necessary to make an additional statement.

The Supreme Court reversed and remanded this cause to the Circuit Court of Appeals for further proceedings in conformity with its opinion and decision, stating:

> "We only hold that the District Court had jurisdiction to resolve the controversy under Sec. 57 of the Judicial Code, 28 USCA, Sec. 118. The Circuit Court of Appeals should have decided what rights under Iowa law, Iowa and its receiver had to the securities and the collections thereon and whether the decree entered by the District Court was kept within the appropriate limits."
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> *Fischer* v. *American United L. Ins. Co., et al.*, 314 U. S. 549, 62 S. Ct. 380, 86 L. Ed. 444, at 452.

In compliance with this mandate, the Circuit Court of Appeals on resubmission, by unanimous decision, declared the law and policy of Iowa in accordance with its statutes and the decisions of its Supreme Court upon the facts in this case, stating:

> "We therefore hold that, under the law of Iowa, title to the securities of the Michigan company, maintained with and in the hands of the Iowa Insurance Commissioner, at the time the Michigan company became insolvent, in fulfillment of its obligation under the reinsurance agreement with the old Iowa company, has become vested in the State of Iowa, and that the Iowa Insurance Commissioner, on behalf of the State, in his official capacity and in his capacity as statutory receiver, has the right, independent of any domicilliary or ancillary receivership of the Michigan company, to administer such securities for the benefit of the policyholders of the old Iowa company. The rights of the Iowa Insurance Commissioner include, as an incident of the vesting of title in the State, the right to receive and collect all payments of interest, dividends, and principal that may thereafter be made. It includes also, of course, as a necessary incident, the vesting of any existing collateral upon the securities."
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> *American United L. Ins. Co., et al.* v. *Fischer*, 130 Fed. (2d) 643, at 647.

The trial court's decree granted incidental relief which was modified by the Court:

> "The trial court's decree will accordingly be modified to eliminate the provisions for incidental relief granted, and to make the date of the vesting of the title to the securities in the State of Iowa conform to the recital in the receivership decree of the Iowa state court, and, as thus modified, the judgment will be affirmed."
>
> *American United L. Ins. Co., et al.*, v. *Fischer*, 130 Fed. (2d) 643, at 648.

On petition for rehearing filed by the Texas Receiver the Court exemplified its declaration of Iowa law and policy and applied the rule clearly settled in the case of *Clark* v. *Williard*, 294 U. S. 211, 55 S. Ct. 356, 357, 79 L. Ed. 865, 98 A. L. R. 347.

The opinion and decision of the Circuit Court of Appeals is a clear and correct statement of the law and policy of Iowa applied to the facts of record and adheres strictly to the principles stated by the Supreme Court in its opinion and decision of this case. Respondent relies upon these decisions to support a denial of the Petition for Certiorari.

In asserting the decision of the Circuit Court of Appeals is contrary to the law and policy of Iowa, petitioners base the argument upon the same authorities submitted to this Court to defeat the jurisdiction of the Federal Court. Petitioners' call for an exercise of the Court's power of supervision of the decision of the Circuit Court of Appeals is again founded on the principle in *Relf* v. *Rundle*, 103 U. S. 222, 26 L. Ed. 337, coupled with the claim that the decision of the Circuit Court of Appeals is in conflict with the weight of authority.

While the Supreme Court expressed no opinion on the merits of the controversy, it is significant to note the very question upon which the petition for certiorari is grounded was considered by the Court when it stated the following:

"It is immaterial to this inquiry whether the Michigan receiver acquired no interest in or power over assets outside of Michigan (*Booth* v. *Clark*, 17 How. (U. S.) 322, 15 L. Ed. 164), or, as held by the court below, was a statutory successor under Michigan law of American Life Insurance Co. and as such had title to all of its assets wherever situated. *Relfe* v. *Rundle* (*Life Asso. of America* v. *Rundle*), 103 U. S. 222, 225, 26 L. Ed. 337, 339; *Clark* v. *Williard*, 292 U. S. 112, 120, 78 L. Ed. 1160, 1165, 54 S. Ct. 615. Cf. *Converse* v. *Hamilton*, 224 U. S. 243, 56 L. Ed. 749, 32 S. Ct. 415, Ann. Cas. 1913D 1292. Even though the latter were true, claimants entitled to the benefits of the fund in Iowa might pursue their suits and remedies against it in derogation of the claim of the Michigan receiver, if that were Iowa's policy. *Clark* v. *Williard*, 294 U. S. 211, 79 L. Ed. 865, 55 S. Ct. 356, 98 A. L. R. 347. That is the asserted Iowa policy here. The Iowa receiver is in possession of the securities in question. He seeks, with the approval of the Iowa court, an authoritative determination by the federal court of the question whether under Iowa law those securities and the collections thereon should not be held for the special class of claimants for whom the fund was allegedly established. The federal court has the power to resolve the controversy."

Fischer v. *American United L. Ins. Co., et al.*, 314 U. S. 549, 62 S. Ct. 380, 86 L. Ed. 444 at 450.

The Circuit Court of Appeals has followed the foregoing direction and applied the law in its decision.

To apply the principle in the case of *Relf* v. *Rundle*, petitioners would have the Court nullify all the applicable statutes of the State of Iowa and substitute in lieu thereof the statutes of the State of Michigan. (See Iowa statutes Appendix "A".)

Petitioners would have this Court ignore the provisions of the reinsurance contract between the Michigan (Detroit) and Iowa (Des Moines) companies, the provisions of the Iowa company's policy contract, and the provisions of the Michigan company's assumption agreement. (See Appendix "B".)

Petitioners would have this Court overrule the principles stated in the decisions of the Supreme Court of Iowa, *Schloss* v. *Metropolitan Surety Company*, 149 Iowa 382, 128 N. W. 384, 385; *State ex rel. Gibson* v. *American Bonding & Casualty Company*, 206 Iowa 988, 221 N. W. 585; *Watts* v. *Southern Surety Company*, 216 Iowa 150, 248 N. W. 347, and substitute decisions of courts of other jurisdictions where the facts are not comparable and the rules are not applicable in the determination of the question of the law and policy of the State of Iowa.

Considering the facts in this case, the statutes of Iowa and the law of the Supreme Court of Iowa, it seems clear the position of the petitioners cannot be sustained.

Again it is claimed, the holders of policy contracts originating in the Iowa company have lost their rights to the benefits of the securities deposited for their benefit in Iowa.

In *ex parte* proceedings the Michigan State Court attempted to adjudicate the rights of policyholders originating in the Iowa Company under a purported reinsurance agreement between petitioners. The Iowa Receiver was not recognized, notified or asked to participate and has not approved or consented to such action. The policyholders originating in the Iowa Company were not advised of their legal rights or the controversy existing between the Michigan and Iowa Receivers. The action taken was in derogation of the rights of Iowa, its Receiver and the policyholders originating in the Iowa Company under the law and policy of Iowa. Surely petitioners cannot now gain advantage of such action based upon their erroneous judgment of the rights of Iowa and its Receiver. Their claim is not germane to the issue here presented. The Circuit Court of Appeals directly and correctly answers this claim as follows:

> "The Michigan receiver and the Indiana company contend here that many of the policyholders of the old

> Iowa company have lost their rights to the benefits of the Iowa deposit, by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement made with the Indiana company, but, without regard to the ultimate merits of these contentions, they are, for the purposes of this proceeding, merely questions incident to the administration of the deposited securities in the Iowa court, and do not affect the general vesting of the title in the Iowa Insurance Commissioner as of June 17, 1938, or the primary right of the Commissioner and the Iowa courts to control the securities."
>
> *American United L. Ins. Co., et al.* v. *Fischer*, 130 Fed. (2d) 643, at 648.

While petitioners suggest that the decision of the Circuit Court of Appeals throws the present receivership into a chaotic condition, this, in respondent's judgment, is not correct. The Michigan Receiver and American United have acted in total disregard of the rights of the respondent and without notice or recognition of the Iowa Receiver in creating the present situation. This situation will be easily and quickly clarified when the rights of the parties are defined by a final decision in this case.

The statement of the Circuit Court of Appeals in its supplemental opinion on Petition for Rehearing, which concluded the litigation to the satisfaction of the Texas Receiver, is a complete and final answer to warrant a denial of this petition for certiorari, and is in conformity with the opinion of the Supreme Court:

> "Our opinion declares that, as a matter of Iowa law and policy, the securities deposited with the Iowa Insurance Commissioner, and in his possession, were charged with protective lien or trust rights in favor of the policyholders of the old Iowa company, and that, on June 17, 1938, legal title to these securities became vested in the State of Iowa, for the benefit of such policyholders, with the right, from that time on, in the Iowa Insurance Commissioner, in his official capacity or in his facilitating status as receiver, to receive and collect payments

of interest, dividends and principal, as inherent incidents of his primary right of title and possession. Insofar as such property is capable of being administered by the Iowa courts, the rights existing under Iowa law are clearly primary and independent, and, as we expressed it in our opinion, they are without 'any subordinacy to the Michigan receivership here' or to 'any one claiming ancillary or derivative rights, such as the Texas receiver, or the Indiana company which has made a reinsurance agreement with the Michigan receiver'."

American United L. Ins. Co., et al. v. *Fischer*, 130 Fed. (2d) 643, at 648.

CONCLUSION.

The unanimous opinion and decision of the Circuit Court of Appeals is clear and correct in pronouncing the law and policy of the State of Iowa upon the facts in this case. No questions have been raised which have not heretofore been considered, which entitle petitioners to a review by this Court. All policyholders will benefit by the termination of this litigation. Respondent asks that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

WILLIS J. O'BRIEN,
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